Supreme Court, U.S.
FILED
MAR 1 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1169

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

TERRE DU LAC, INC., TERRE DU LAC GOLF & COUNTRY CLUB, INC., TERRE DU LAC COUNTRY CLUB ASSOCIATION, a limited partnership, C.I.T. CORPORATION, SENSIBAR ENTERPRISES, INC., MO-ILL, LTD., and JAMES O. KWON,
Petitioners,

vs.

TERRE DU LAC ASSOCIATION, INC.,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Petitioners, Terre Du Lac, Inc., Terre Du Lac Golf & Country Club, Inc., Terre Du Lac Country Club Association, a limited partnership, C.I.T. Corporation, Sensibar Enterprises, Inc., MO-ILL, Ltd., and James O. Kwon respectfully submit this reply brief in support of their petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit.

On February 7, 1986, the United States Court of Appeals for the Fifth Circuit issued its opinion in *Armco Industrial Credit Corp. v. SLT Warehouse Co.*, No. 84-1828 (5th Cir., Feb. 7, 1986). In *Armco*, the Fifth Circuit agreed with the Eighth Circuit that detrimental reliance is not a necessary element of a fraud-based RICO claim.[1] The Fifth and Eighth Circuits are

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[1] Because the Fifth Circuit also held that Plaintiff failed to make a submissible case, however, *Armco* is unlikely to present an appropriate vehicle for this Court to resolve the issue.

thus aligned in square opposition to the Sixth Circuit, which has unambiguously held that detrimental reliance *is* an essential element of a fraud-based RICO claim:

> Where a corporation is defrauded bringing about ultimate bankruptcy, a cause of action exists on the part of the corporation against wrongdoer. Should the requisites of RICO be met, there may exist a federal cause of action on behalf of the corporation. Employees of the corporation who may incidentally lose their jobs do not have a fraud claim against the alleged wrongdoer.[2] Similarly, said employees do not have a claim under RICO simply because the acts of fraud satisfy 18 U.S.C. § 1961(1), thus raising the claim to a federal level.
>
> 2. In an action based on fraud one of the crucial elements is reliance. Employees of a defrauded corporation have no cause of action for fraud where they have not relied on the misrepresentation. See Restatement (Second) of Torts §533.

Warren v. Manufacturer's National Bank of Detroit, 759 F.2d 542, 545 (6th Cir. 1985).

Respondents acknowledge that this question presents an important issue of federal law that can be resolved in this case. Br. at 6. The recent action by the Fifth Circuit in *Armco* demonstrates the continuing confusion in the Circuits over this important issue, and the necessity of timely review by this Court.

Petitioners respectfully pray that a Writ of Certiorari should issue to review the judgment and opinion of the Eighth Circuit.

Respectfully submitted,

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